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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN WHITWORTH,

Defendant.

CASE NO. 1:22-CR-00222-ADA-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: September 13, 2023
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

BACKGROUND

This case is set for a status conference on September 13, 2023. This Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for a status conference on September 13, 2023.
2. By this stipulation, defendant now moves to continue the status conference until October 11, 2023, and to exclude time between September 13, 2023, and October 11, 2023, under 18 U.S.C.

§ 3161(h)(7)(A), B(iv) [Local Code T4].

3. The parties agree and stipulate, and request that the Court find the following:

a) The discovery associated with this case includes 5.34 gigabytes of discovery including investigative reports, audio and video footage, and related documents in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Counsel for defendant desires additional time to consult with his client, review the current charges, review discovery, and to conduct investigation related to the charges.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government and the defense counsel have entered into plea negotiations with the hopes to resolve the case short of trial. The government sent a plea offer to the defense on May 30, 2023 after the parties discussed whether the provisions of the Armed Career Criminal Act would apply to Whitworth. The defense counsel desires additional time to discuss the plea offer with his client. Thus, the parties request a short continuance until October 11, 2023 to allow the defense sufficient time to discuss the plea with his client.

e) The government does not object to the continuance.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 13, 2023 to October 11, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the

Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: September 5, 2023

PHILLIP A. TALBERT
United States Attorney

/s/ ARIN C. HEINZ
ARIN C. HEINZ
Assistant United States Attorney

Dated: September 5, 2023

/s/ ROBERT LAMANUZZI
ROBERT LAMANUZZI
Counsel for Defendant
BRIAN WHITWORTH

ORDER

IT IS SO ORDERED that the status conference is continued from September 13, 2023, to **October 11, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: September 5, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE